THE HON'BLE Ms. JUSTICE G. ROHINI

W.P.No.9634 OF 2005

Dated: 27th October, 2005.

Between:

Pavuluri Satyanarayana … Petitioner

And

Government of A.P., rep. by its Secretary,

Department of Roads & Buildings, A.P. Secretariat,

Hyderabad and others. … Respondents

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W.P.No.9634 OF 2005

ORDER :

This Writ Petition is filed seeking a declaration that the order passed by the 3rd respondent-Executive Engineer, Roads and Buildings (Roads), Tirupati, dated 10.8.2004, as arbitrary and illegal and for a consequential direction to the respondents to hand over the Toll Gate at Km. 85/10, near Srikalahasti.

The facts in brief may be noted as under:

The petitioner is the highest bidder in the auction conducted in pursuance of the Tender Notification dated 27.4.2004, issued by the 2nd respondent in respect of the leasehold rights of collecting Tolls on the Bridge on Swarnamukhi River at Km. 85/10 on Puthalpet-Naidupet - Bypass Road to Srikalahasti town in Chittoor District, which was mentioned as item 4 in the Tender Notification. The minimum upset price mentioned was Rs.85.56 lakhs and the bid of the petitioner for Rs.1,56,00,600/-, being the highest, the auction was knocked down in his favour. The petitioner states that he paid the required security deposit of Rs.14,18,400/- and the 3rd respondent has executed an agreement dated 2.6.2004, which was registered on 16.6.2004 at the District Sub-Registrar, Tirupati. As per Schedule-A to the said agreement, the Toll Gate is situated at Km.85/10 for collection of tolls related to the Bridge on Swarnamukhi River on Puthalpet-Naidupet - Bypass Road and the lease period is from 1.6.2004 to 31.3.2006. In pursuance thereof, the petitioner was permitted to enter the Toll Gate as specified in the agreement on 2.6.2004 itself, however, it is

alleged that the 4th respondent came to the site and asked the petitioner to open the Toll-Gate at Km. 88/8 on the Puthalpet-Naidupet – Bypass Road to Srikalahasti Town instead of Km. 85/10 which was actually auctioned and for which tenders were called for. The 4th respondent has also issued proceedings to that effect on 3.6.2004. Immediately thereafter, the petitioner made representations dated 5.6.2004, 12.6.2004 and 7.7.2004, requesting the respondents to hand over the Toll-Gate at Km. 85/10, instead of Km. 88/8 as it was causing serious financial loss to him. The petitioner alleges that the traffic at Km. 88/8 is less than 50% of the volume of traffic at Km. 85/10 and he made the bid in response to the Tender Notification, basing on the statements made thereunder that the Toll-Gate would be at Km. 85/10. However, the respondents failed to consider the requests of the petitioner and since there was no response to the representations made by him, he earlier filed W.P.No.12361 of 2004. This Court by order dated 19.7.2004 disposed of the said Writ Petition at the stage of admission with a direction to the 3rd respondent to consider the representations made by the petitioner and to pass appropriate orders in accordance with law. In pursuance thereof, the 3rd respondent passed an order dated 10.8.2004, informing the petitioner that his request for change of Toll point cannot be accepted, and accordingly advising him to maintain the Toll-Gate at Km. 88/8 only, which is the correct location for collection of tolls with reference to the existing Bridge across River Swarnamukhi. The said order is under challenge in this Writ Petition.

The learned counsel for the petitioner vehemently contends that since all the documents, right from the auction Notification specifically indicated the Toll point as Km. 85/10, the impugned action of the respondents in not allowing the petitioner to operate Toll-Gate at Km. 85/10 is arbitrary and illegal. The learned counsel submits that Km. 85/10 which is on Puthalpet-Naidupet Road 200 metres away from the Bridge on Swarnamukhi River is the actual Bridge, for which leasehold rights were put to auction, and therefore, the version of the respondents in the impugned order is nothing but deliberate misstatement of facts. Thus, it is contended that the impugned order on the face it, is vitiated on account of arbitrariness and *mala fides.*

On the other hand, the learned Government Pleader appearing for the respondents

contends that there is absolutely no ambiguity as to the toll point which was put to auction i.e., Toll point at Km. 88/8, which is existing in the Bypass Road and on the approach to the Bridge on Swarnamukhi River. The learned Government Pleader contends that having failed to seek any clarification either at the time of bidding or at the time of executing the agreement, it is not open to the petitioner to raise a dispute now after the contract is concluded. Thus, according to the learned Government Pleader, the Writ Petition is liable to be dismissed *in limini* as not maintainable.

It is to be noted that in the counter-affidavit filed on behalf of the respondents it is stated that in the Tender Notice itself it was clearly mentioned that the toll to be collected on Bridge across Swarnamukhi River and forming bypass road to Srikalahasti town on P.N. Road. Actually, the new bridge was constructed parallel to Ramasethu Bridge (at Km.87/10 old Girder Bridge) on Swarnamukhi river at Km. 88/8 of P.N. Road. But there is no bridge constructed by the R & B Department at Km. 85/10 which is nearly 600 mts. before the diversion point to the Bypass road. It is stated that the lessee has actually taken over the focal point at Km. 88/8 at '0' hours on 3-6-2004, on that day he never refused to take over the toll point. After getting back his E.M.D.'s etc., duly replacing with Bank Guarantees he raised the claim of handing over of the Toll gate at Km. 85/10. The existing toll collection at Km.88/8 of P.N. Road is in force since April, 1999. It is further stated that the measurements furnished by the lessee are totally wrong, as the Bypass Road started at Km. 86/6 of Puthalpet-Naidupet Road, well before 1.20 Kms of old Girder Bridge (88/0). The Government's intention to form the Bypass road is to divert some traffic from the town as well as to avoid heavy tonnage on the old Ramasethu Steel Girder Bridge at Km. 88/0. Kalahasti town bound vehicles will use the old road and the Toll is meant for the vehicles, which are using the new Bridge on Bypass Road. It is also stated that the orders passed by the respondent dated 10.8.2004 are according to the auction notice and since the construction of the Bridge, the collection of Toll is at the same point and not at the point demanded by the petitioner. It is also stated that as per the Government norms, the toll is to be collected on the newly constructed bridges costing more than Rs.25.00 lakhs according to G.O.Ms.No.181, dated 18-9-1997. The toll point where the tolls to be collected is also specifically notified i.e., 100 mts. away from the approach of the bridge and also the toll fee to be collected from the specified vehicles those which are passing on the newly constructed bridge. Here the new bridge is constructed on Swarnamukhi river and forming bypass road to Srikalahasti Town on Puthalpet

Naidupet road at Km. 89/2.

From the averments in the counter-affidavit, it appears that the toll point at Km 88/8 has been in existence for the past several years and the said toll point is in accordance with the condition under the agreement that the toll station shall be located 100 mts. away from the approach of the bridge. It is also the specific case of the respondent that there is no bridge constructed by the R & B Department at Km 85/10 which is nearly 600 mts. before the diversion point to the bypass road. It is true that in the tender notice dated 23-4-2004 item No.4, which is the subject-matter of this writ petition, specifically mentions Km. 85/10. However, merely on that ground it cannot be concluded that tenders were invited for location of the toll point at Km. 85/10. The petitioner pleads that there are two bridges across Swarnamukhi river, one at Km. 85/10 and another at km. 88/8 and that the third respondent has deliberately misstated the facts. The question with regard to the actual location of the existing toll point and the question whether the fact that the respondents have mentioned Km. 85/10 in the tender notice created any ambiguity are all pure questions of fact which require to be decided by an appropriate forum on the basis of evidence that may be putforth by both the parties. That apart, admittedly the contract has already been concluded between the parties. It is a voluntary act on the part of the parties. Even assuming that the respondents have erroneously handed over the Toll point at Km.88/8 instead of Km. 85/10, it is nothing but breach of terms and conditions agreed upon. Hence the relief sought by the petitioner in the case on hand is nothing but enforcement of obligations arising out of terms and conditions of a contract, which cannot be granted by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. Not only the matter involves several disputed questions of fact, but also obviously the matter does not involve enforcement of any statutory right. The law is well-settled that the allegations which arise out of such a case of a concluded contract voluntarily entered into between the parties cannot be dealt with under Article 226 of the Constitution of India.

It is always open to the petitioner to work out the appropriate remedy as available under law to establish the allegation that the respondents have deliberately handed over the Toll point at Km. 88/8 instead of Km. 85/10 which was actually auctioned and for which tenders were called for and to seek necessary relief. Hence, I am not inclined to express any opinion as to the correctness of the

rival claims made by the parties.

Accordingly, without expressing any opinion on merits, the Writ Petition is disposed of granting leave and liberty to the petitioner to work out the appropriate remedy as available under law for redressal of his grievance. No costs.

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27th October, 20005.

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